

Education Cabinet

Kentucky Board of Education

Department of Education

(New Administrative Regulation)

704 KAR 7:160. Use of Restraint and Seclusion in Public Schools

RELATES TO: KRS 156.160 (1) (g)

STATUTORY AUTHORITY: KRS 156.160 (1) (g); KRS 156.070.

NECESSITY, FUNCTION, AND CONFORMITY: 156.160 (1) (g) gives the Kentucky Board of Education the authority to promulgate administrative regulations related to medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the physical welfare and safety of the public school children. The use of improper restraint and seclusion by covered entities directly affects the physical welfare of students and may result in injury or possible death of students. This administrative regulation establishes the requirements for appropriate use of restraint and seclusion in covered entities.

Section 1. Definitions. (1) “Aversive behavioral interventions” means a physical or sensory intervention program intended to modify behavior that would cause physical trauma, emotional trauma or both, to a student even when the substance or stimulus appears to be pleasant or neutral to others. Substances and stimuli may include hitting, pinching, slapping; water spray; noxious fumes; extreme physical exercise; loud auditory stimuli; withholding of meals or denial of reasonable access to toileting facilities.

(2) “Behavior intervention” means the implementation of strategies to address behavior that is dangerous, disruptive, or otherwise impedes the learning of students or others.

(3) “Behavioral Intervention Plan” means a comprehensive plan for managing problem behavior by changing or removing contextual factors that trigger or maintain it, and by strengthening replacement skills.

(4) “Chemical restraint” means the use of medication to control behavior or restrict a student’s freedom of movement but does not include medication prescribed by a licensed medical professional and supervised by qualified and trained individuals in accordance with professional standards.

(5) “Dangerous behavior” means behavior that presents an imminent risk of injury or harm to a student or others.

(6) “De-escalation” means the use of behavior management techniques intended to cause a situation involving problem behavior of a student to become more controlled, calm and less dangerous, thus reducing the risk of injury or harm.

(7) “Emergency” means a sudden, urgent occurrence, usually unexpected but sometimes anticipated, that requires immediate action.

(8) “Functional Behavioral Assessment” means a school-based process to determine why a child engages in challenging behaviors and how the behavior relates to the child’s environment including direct assessments, indirect assessments and data analysis designed to assist the team to identify and define the problem behavior in concrete terms, identify the contextual factors (including affective and cognitive factors) that contribute to the behavior, and formulate a hypothesis regarding the general conditions under which a behavior usually occurs and the

probable consequences that maintain the behavior. Formal documentation of the assessment by appropriately qualified individuals becomes part of the child's educational record.

(9) "Imminent risk of injury or harm" means a situation in which a student has the means to cause serious harm or injury to self or others and such injury or harm is likely to occur at any moment, such that a reasonable and prudent person would take steps instantly to protect the student and others against the risk of such injury or harm.

(10) "Mechanical restraint" means any item worn by or placed on the student, which cannot be easily removed by the student that restricts freedom of movement or normal access to any portion of the student's body movement to prevent or manage disruptive behavior but does not include restraints for medical immobilization; adaptive devices or mechanical supports used to allow great freedom of mobility than possible without the use of such devices or supports; or, vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.

(11) "Parent" means a biological or adoptive parent, guardian or custodian of a minor child, except that the parent of a child with disabilities means a parent as defined in 707 KAR 1:002, Section 1 (43).

(12) "Physical Restraint" means an intervention that restricts a student's freedom of movement or normal access to his or her body, and includes the forcible moving of a student against the student's will. Physical restraint does not include the temporary touching or holding of the hand, wrist, arm, shoulder, hip or back for the purpose of moving a student voluntarily.

(13) "Positive behavioral supports" means a set of instructional and environmental supports to teach students pro-social alternatives to problem behaviors with high rates of positive feedback.

(14) "Prone restraint" means the student is face down on their stomach.

(15) "School personnel" means teachers, principals, administrators, counselors, social workers, psychologists, paraprofessionals, nurses, librarians, and other support staff who are employed by a school or who perform services for the school on a contractual basis such as security officers who are not sworn officers of the law.

(16) "School resource officer" means a sworn officer of the law, deployed in community oriented policing, and assigned by the employing police department to a local educational agency.

(17) "Seclusion" means the involuntary confinement of student alone in a room or area from which the student is prevented from leaving but does not include practice of providing a quiet, comfortable, accessible, unlocked space where a child may choose to take a break from sensory stimulation or may be supported to calm down and self-regulate, and which is used within the context of a positive behavior support plan that is directly related to the function of the child's behavior.

(18) "Serious bodily injury" means any bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(19) "Student" means a child or adult aged 3 through 21 enrolled in a school or a program that is a covered entity as defined in this section.

(20) "Supine restraint" means the student is face up on the back.

(21) "Timeout" means an intervention where a student requests, or complies with an adult request for a break, and is not covered by this administrative regulation.

Section 2. (1) Local districts shall establish local policies and procedures that:

- 1 (a) Ensure school personnel and parents are aware of its policies and procedures regarding
- 2 restraint and seclusion;
- 3 (b) Keep all students, including students with the most complex and intensive behavioral needs,
- 4 and school personnel, safe;
- 5 (c) Ensure planning for the appropriate use of restraint in crisis situations carried out by a team
- 6 of professionals trained in accordance with state-approved crisis intervention training programs;
- 7 (d) Outline procedures to be followed during and after each incident involving the imposition of
- 8 physical restraint or seclusion upon a student, including notice to parents, documentation of the
- 9 event in the Student Information System, and a debriefing process;
- 10 (e) Require notification of the Kentucky Department of Education and local law enforcement in
- 11 the event of death or serious bodily injury of a student in conjunction with the use of physical
- 12 restraint or seclusion; and
- 13 (f) Outline a procedure available by which parents may submit a complaint regarding the use of
- 14 physical restraint or seclusion on their child, which requires the district and school to investigate
- 15 the circumstances surrounding the incident complained of, make written findings and, where
- 16 appropriate, determine to take corrective action.
- 17 (2) Local districts shall revise existing policies or develop policies consistent with this
- 18 administrative regulation within 90 calendar days of the effective date of this administrative
- 19 regulation.

20 Section 3. (1) Restraint shall not be used:

- 21 (a) As punishment to force compliance;
- 22 (b) As a substitute for appropriate educational support; or

(c) To prevent property damage that is not significant or disruption of the environment in the absence of imminent risk of serious bodily injury.

(2) School personnel are prohibited from imposing the following on any student:

(a) Mechanical restraint,

(b) Chemical restraint,

(c) Aversive behavioral interventions that compromise health and safety, or,

(d) Physical restraint that is life-threatening; or

(e) Prone and supine restraint that restrict breathing.

(3) Physical restraint may be implemented if:

(a) The student's behavior poses an imminent risk of serious injury or harm to self or others;

(b) The physical restraint does not interfere with the student's ability to communicate in the student's primary language or mode of communication; and

(c) Less restrictive interventions have been ineffective in stopping the imminent risk of serious injury or harm to the student or others, except in the rare case of a clearly unavoidable emergency situation posing imminent risk of injury or harm to the student or others.

(4) When implementing a physical restraint, staff shall use only the amount of force necessary to protect the student or others from imminent risk of injury or harm to the student or others.

(5) The use of physical restraint shall end when:

(a) A medical condition occurs putting the student at risk of harm, or

(b) The student's behavior no longer poses an imminent risk of injury or harm to the students or others.

(6) School personnel imposing physical restraint in accordance with this regulation shall:

(a) Be trained and certified by a state-approved crisis intervention training program, except in the case of rare and clearly unavoidable emergency circumstances when trained school personnel are not immediately available due to the unforeseeable nature of the emergency circumstance; and

(b) Be trained in state and school policies and procedures regarding restraint and seclusion.

(7) The use of physical restraint as a planned intervention shall not be written into a student's Individual Education Program (IEP), Section 504 Plan, individual student safety plan or any other planning document for an individual student.

(8) A functional behavioral assessment shall be conducted following the first incident of restraint being used, unless one has been previously conducted for the behavior at issue.

Section 4. (1) Seclusion shall not be used:

(a) As punishment to force compliance;

(b) As a substitute for appropriate educational support;

(c) To prevent property destruction that is not significant or disruption of the environment in the absence of imminent risk of injury or harm; or

(d) As a substitute for time-out.

(2) Seclusion may be implemented when:

(a) The student's behavior poses an imminent risk of injury or harm to self or others or significant property damage is imminent;

(b) The parents of a nondisabled student have provided prior written consent for the use of seclusion while a behavior intervention plan is being developed; and

(c) Assigned staff are appropriately trained to use seclusion.

(3) A setting used for seclusion shall:

(a) Be free of objects and fixtures with which a student could self-inflict bodily harm;

- (b) Provide school personnel view of the student at all times;
- (c) Provide adequate lighting and ventilation; and
- (d) Be reviewed by district administration to ensure programmatic implementation of guidelines and data related to its use.

4. If a room is used for seclusion, the room shall:

- (a) Have an unlocked and unobstructed door; and
- (b) Be inspected at least annually by fire and safety inspectors.

Section 5: (1) All incidents of the use of restraint and seclusion shall be documented by a written record of each episode of seclusion or physical restraint maintained in the student's school record. Each such record shall include:

- (a) The student's name;
 - (b) A description of the incident and the student behavior that resulted in the restraint or seclusion;
 - (c) The date of the incident and staff members involved;
 - (d) The beginning and ending times of the incident;
 - (e) A description of any relevant events leading up to the use of restraint or seclusion;
 - (f) A description of the student's behavior in restraint or seclusion;
 - (g) A description of the techniques used in restraining or secluding the student and any other interactions between the student and staff during the use of restraint or seclusion;
 - (h) A description of any interventions used prior to the implementation of restraint or seclusion;
 - (i) A description of any injuries whether to students, staff, others or property damage;
 - (j) A description of any planned approach to dealing with the student's behavior in the future;
- and

(k) The date the parent was notified.

(2) The parent of the student shall be notified of the restraint and seclusion verbally or through electronic communication on the same day as the incident. If the parent cannot be reached that day, a written communication shall be sent to the parent within 24 hours of the incident.

(3) The principal of the school shall be notified of the seclusion or physical restraint as soon as possible, but no later than the end of the school day on which it occurred.

(4) The record of the incident shall be completed 24 hours following the episode of seclusion or physical restraint.

(5) After the imposition of restraint and seclusion upon a student, all school personnel in the proximity of the student immediately before and during the time of the incident, the student, appropriate supervisory and administrative staff, and appropriate Admissions and Release Committee or Section 504 team members shall participate in a debriefing session.

(a) The debriefing session shall occur as soon as practicable, but not later than five school days following the imposition of seclusion or physical restraint, unless delayed by written mutual agreement of the parent and the school.

(b) The debriefing session shall include:

1. Identification of the events leading up to the seclusion or physical restraint;
2. Consideration of relevant information in the student's records and information from teachers, parents other professionals and the student;
3. Planning to prevent and reduce reoccurrence of the seclusion or physical restraint, including the results of functional behavioral assessments, whether positive behavior plans were implemented with fidelity, recommended appropriate positive behavioral interventions and

supports to assist personnel responsible for implementing the student's IEP or Section 504 plan if applicable; and

4. For any student not identified as eligible for services under either Section 504 of the Rehabilitation Act or the Individuals with Disabilities Education Act, evidence of a referral under either law, or documentation of the basis for declining to refer the student.

Section 6. (1) If serious bodily injury or death of a student occurs in conjunction with the use of physical restraint or seclusion, the covered entity shall notify the Kentucky Department of Education and local law enforcement, within 24 hours after such death or injury occurs.

Section 7. (1) School personnel shall be trained to use an array of positive behavior interventions, strategies, and supports to increase and decrease targeted student behaviors.

(2) All personnel, except for school resource officers, in local districts shall have basic training in responding to students in a behavioral crisis. The training shall include:

(a) Strategies regarding conflict de-escalation, including verbal de-escalation;

(b) Identification of staff in the school setting that have been trained to engage in physical restraint or seclusion procedures; and

(c) Strategies for preventing and avoiding the need for restraint and seclusion by using positive behavior supports and reinforcing appropriate student behavior.

(3) A core team of selected school personnel shall be designated to respond to emergency situations, including physical restraint or seclusion of students. The core team shall receive yearly training in the following areas:

(a) Appropriate procedures for preventing the need for physical restraint and crisis intervention, that shall include the de-escalation of problematic behavior, relationship building and the use of alternatives to restraints;

(b) A description and identification of dangerous behaviors on the part of students that may indicate the need for physical restraint/crisis intervention and methods for evaluating the risk of harm in individual situations, in order to determine whether the use of physical restraint and crisis interventions are warranted;

(c) Simulated experience of administering and receiving physical restraint and crisis intervention, instruction regarding the effect(s) on the person restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;

(d) Instruction regarding documentation and reporting requirements and investigation of injuries; and

(e) Demonstration by participants of proficiency in administering physical restraint/ crisis intervention.

Section 8. (1) The following data shall be reported in the student information system related to incidents of restraint and seclusion:

(a) A description of any relevant events leading up to the use of restraint or seclusion;

(b) A description of the student's behavior in restraint or seclusion;

(c) A description of techniques used in restraining or secluding the student and any other interactions between the student and staff during the use of restraint or seclusion;

(d) A description of any interventions used prior to the implementation of restraint or seclusion;

(e) A description of any injuries whether to students, staff, others or property damage;

(f) The date the parent was notified; and

(g) Date of the debriefing session held.